

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HAIKEL GSOURI and JEFFERY GIBBS,

Plaintiffs,

V.

FARWEST STEEL CORPORATION, an  
Oregon corporation,

Defendant.

CASE NO. C10-5769BHS

ORDER GRANTING  
DEFENDANT'S MOTION TO  
SEVER

This matter comes before the Court on Defendant's Motion to Sever (Dkt. 13). The Court has reviewed the briefs filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

## **I. PROCEDURAL HISTORY**

On September 15, 2010, Plaintiffs Haikel Gsouri (“Gsouri”) and Jeffery Gibbs (“Gibbs”) filed a complaint in state court against Defendant Farwest Steel Corporation (“Farwest”) alleging violations of the Washington Law Against Discrimination, RCW 49.60 *et seq.*, and 42 U.S.C. § 1981. Dkt. 1, Exh. A. On October 20, 2010, Farwest removed the action to this Court. Dkt. 1.

On March 16, 2011, Farwest filed a Motion to Sever. Dkt. 13. On March 28, 2011, Plaintiffs responded. Dkt. 16. On April 1, 2010, Farwest replied. Dkt. 18.

## 1 II. FACTUAL BACKGROUND

2 In June 2006 Gibbs was hired as a production worker in Farwest's Vancouver  
 3 plant. Dkt. 14, Declaration of Kevin Peterson ("Peterson Decl."), ¶ 2. Gibbs asserts that  
 4 he is African American and alleges that he experienced "ongoing racial harassment over  
 5 [his] period of employment with [Farwest]." Dkt. 17, Declaration of Gregory D.  
 6 Ferguson ("Ferguson Decl."), Exh. B ("Gibbs Decl."), ¶ 2. Gibbs asserts that his race  
 7 "complaints were made to shop manager, Terry Grier, and Managers Jeff Estep and Al  
 8 Webster." *Id.*, ¶ 7. He also asserts that he "complained as high up the management chain  
 9 as [he] could go, eventually meeting with Human Resources Manager, Kevin Peterson  
 10 and a Branch Manager named 'Perry.'" *Id.*, ¶ 9. Gibbs tendered his two-week notice of  
 11 resignation on May 15, 2008. Peterson Decl., ¶ 7.

12 After Gibbs's resignation, Farwest's management undertook an investigation  
 13 which concluded in June 2008. *Id.*, ¶ 7. Several of Gibbs's co-workers were interviewed  
 14 about the working conditions, including Goldfinch, Homero Anguiano Alcazar, Lincoln  
 15 Smith, Robert Byfield, Michael Deeley, Brad French, Joseph Gresko, Gsouri, David Hall,  
 16 J.P. Katims, Celerio, Kyle Plourd, Alan Webster, Eleazar Mendoza, and Shawn Johnson.  
 17 *Id.*

18 Gsouri was initially a temporary worker in Farwest's Vancouver plant and was  
 19 hired as a regular production employee in March 2008. *Id.*, ¶ 8. Gsouri asserts that he is  
 20 Muslim. Ferguson Decl., Exh. G. Gsouri made the following two complaints of racial  
 21 mistreatment during his employment:

22 1. On September 17, 2009, Mr. Gsouri submitted a formal complaint  
 23 letter about his supervisor, Gil Estep. Mr. Gsouri complained, among other  
 24 things, that Estep called him a "terrorist" and "hijacker." *Id.*

25 2. On November 9, 2009, Mr. Gsouri submitted a second complaint  
 26 letter, this time accusing Gil Estep of retaliation. Specifically, Mr. Gsouri  
 27 accused Gil Estep of removing him from a shear machine. Ferguson Decl.,  
 28 Exh. H.

1 On November 16, 2009, Kevin Peterson terminated Gousri's employment based on a  
 2 safety infraction. Peterson Decl., ¶ 15.

3 **III. DISCUSSION**

4 Under Federal Rule of Civil Procedure 20, joinder is proper if (1) the plaintiffs  
 5 assert a right to relief arising out of the same transaction and occurrence and (2) some  
 6 question of law or fact common to all plaintiffs will arise in the action. *See Fed. R. Civ. P.*  
 7 20(a); *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1296 (9th Cir. 2000). Under Federal  
 8 Rule of Civil Procedure 21, a court may sever any claim against a party on "just terms."  
 9 *Fed. R. Civ. P.* 21. A court may, in its discretion, sever a trial under Rule 21, even if the  
 10 parties are properly joined under Rule 20(a). *See United States v. O'Neil*, 709 F.2d 361,  
 11 369 (5th Cir. 1983).

12 In this case, Farwest argues that Plaintiffs' claims do not arise out of the same  
 13 transaction or occurrence. Dkt. 13 at 5. Plaintiffs counter that, if the "source" of the  
 14 discrimination is the same, then the claims are tied together by a "pattern of practice of  
 15 discrimination" and joinder is proper. Dkt. 16 at 5 (citing *Mosley v. General Motors*  
 16 *Corporation*, 497 F.2d 1330, 1333 (8th Cir. 1974)). The problem with this argument,  
 17 however, is that Gibbs alleges discrimination by co-workers whereas Gsouri alleges  
 18 discrimination by his supervisor. Moreover, Gsouri's first complaint regarding  
 19 discrimination was made almost sixteen months after Gibbs resigned. Therefore, the  
 20 Court finds that joinder is not proper because Gibbs and Gsouri's claims do not arise from  
 21 the same transaction or occurrence

22 Even if the Court found that joinder was permitted, the Court concludes that  
 23 severance is appropriate under Rule 21. Gibbs asserts racial discrimination by co-  
 24 workers and constructive discharge. On the other hand, Gsouri asserts national origin  
 25 discrimination and retaliation by his supervisor. Although each Plaintiff may call the  
 26 same fact witnesses, the witnesses would provide testimony of different facts for each  
 27 28

1 Plaintiff. Farwest would be prejudiced by the possibility of the jury aggregating the  
2 alleged instances of discrimination and clouding impartial judgment as to each cause of  
3 action. Therefore, the Court finds that Farwest has shown that just terms support  
4 severance of Gibbs's and Gsouri's claims.

5 **IV. ORDER**

6 Therefore, it is hereby **ORDERED** that Defendant's Motion to Sever (Dkt. 13) is  
7 **GRANTED**. The Clerk of Court shall establish separate docket numbers for each of the  
8 cases.

9 DATED this 12<sup>th</sup> day of May, 2011.

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11   
12 BENJAMIN H. SETTLE  
13 United States District Judge